

### **REMARKS/DISCUSSION OF ISSUES**

Claims 2-10 and 16-26 are pending in the application.

Applicant notes that claims 4-5, 16-18 and 20-26 have been indicated to define patentable subject matter and would be allowable if rewritten in independent form including all features of their respective base claims and any intervening claims.

Reexamination and reconsideration are respectfully requested in view of the following Remarks.

### **BRIEF SUMMARY OF INTERVIEW WITH EXAMINER**

The Office Action Summary indicates that the Office Action of 13 April 2009 is non-Final. Also, page 2 of the Office Action indicates that the previous rejections have been withdrawn, and new grounds of rejection are made in the Office Action (even though Applicant did not amend the claims and therefore did not necessitate these new grounds of rejections). So the undersigned attorney believes that the Office Action should be non-Final. However, page 4 of the Office Action states that ***"This Action Is Made Final."***

Accordingly, on 30 June 2009 the undersigned attorney telephoned Examiner Truong to request a clarification as to whether the Office Action is Final or Non-Final. The Examiner stated that the Office Action is non-Final, and that the statement on page 4 was part of a form paragraph that had been inadvertently included in the Office Action.

### **35 U.S.C. § 103**

The Office Action rejects claims 2, 6-10 and 19 under 35 U.S.C. § 103 over Nagano U.S. Patent 5,570,339 ("Nagano") in view of Sauer et al. U.S. Patent 5,574,407 ("Sauer") and further in view of Chiasson et al. U.S. Patent 5,546,429 ("Chiasson")<sup>1</sup>.

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<sup>1</sup> Page 2 of the Office Action states that claim 3 is rejected under 35 U.S.C. § 103. However, no explanation of that rejection is provided in the Office Action. Meanwhile, the Office Action Summary does not mention any rejection of claim 3, and instead states that claim 3 is objected to. Furthermore, page 4 of the Office Action indicates that claim 3 would be allowable if rewritten in independent form, including all features of its base claim 2. Therefore, Applicant understands that claim 3 is not rejected,

Applicant respectfully traverses those rejections for at least the following reasons.

Claim 2

Among other things, the method of claim 2 includes inserting local phase errors in the bitstream of a primary signal to distort the bitstream of the primary signal.

The Office Action fairly admits that Nagano fails to disclose or suggest such a feature.

However, the Office Action states that: (1) Chiasson discloses this feature in at col. 7, lines 41-46; and (2) it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Nagano's method to include this feature "*to enhance the phase lock loop with error consistency detector.*"<sup>2</sup>

Applicant respectfully disagrees with both of these statements, and respectfully traverses the proposed combination of Nagano and Chiasson for at least the following reasons.

A rejection on obviousness grounds under 35 U.S.C. § 103 cannot be sustained by mere conclusory statements: instead there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. See M.P.E.P. § 2142 (quoting In re Kahn, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006) and KSR 82 USPQ2d at 1396 (2007) (quoting Federal Circuit statement with approval)).

Applicant respectfully submits that the present rejection is not based on an articulated reasoning with any rational underpinnings, but instead is based on an incorrect characterization of the teachings of Chiasson, combined with conclusory statements.

At the outset, Chiasson is directed to a frequency hopping code division multiple access (CDMA) radio. Chiasson discloses a system that employs error

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and that page 2 of the Office Action includes a typographical error. Clarification is respectfully requested.

2 Although the Office Actions states that claim 1 is rejected based on a combination of Nagano, Sauer and Chiasson, there is no mention of Sauer in the discussion of the rejection of claim 2.

correction and interleaving to mitigate data errors. Chiasson also discloses that a predetermined sync pattern is inserted into the error-protected data to facilitate correlation and optimum bit detection at the receiver (these features are well known in the art of digital data communication).

Applicant respectfully submits that Chiasson does not disclose or remotely suggest inserting any local phase errors in the bitstream of any primary signal to distort the bitstream of the primary signal. In particular, Applicant submits that Chiasson does not disclose or suggest any such thing in col. 7, lines 41-46.

Again, the Office Action admits that Nagano does not disclose these features.

So no combination of the cited art could ever produce the method of claim 1 that includes these features.

Furthermore, the Office Action does not provide any evidence in support of the conclusory statement that one of ordinary skill in the art at the time of the invention would have combined Chiasson with Nagano *"to enhance the phase lock loop with error consistency detector."* Furthermore, the Office Action does not even provide any evidence that such a modification actually would *"enhance any phase lock loop with error consistency detector"* – or that this would have been recognized by one of ordinary skill in the art at the time the invention was made. Indeed, Applicant does not even see any mention of any *"error consistency detector"* anywhere in Chiasson.

Therefore, for at least these reasons, Applicant respectfully submits that claim 2 is clearly patentable over the cited art. Accordingly, Applicant respectfully request that the rejection of claim 2 be withdrawn, and that claim 2 be allowed.

#### Claims 6, 7 and 19

Claims 6, 7 and 19 all depend from claim 2 and are deemed patentable for at least the reasons set forth above with respect to claim 2, and for the following additional reasons.

The rejections of claims 6 and 7 mention *"Nagano and Sauer."* However, the Office Action fails to provide any reason for combining Nagano and Sauer, or any explanation as to how it proposed that they are being combined.

Applicant respectfully submits that this is a clear error. See M.P.E.P. § 2142 cited above.

Therefore, for at least these additional reasons, Applicant respectfully submits that the rejections of claims 6 and 7 are in error and should be withdrawn.

Claim 8

Among other things, the apparatus of claim 8 includes distortion means for distorting the bitstream of a primary signal such that a secondary signal is represented by a predetermined distortion, wherein the distortion means includes means for inserting local phase errors in the bitstream of the primary signal.

For similar reasons to those set forth above with respect to claim 2, Applicant respectfully submits that Chiasson does not disclose or remotely suggest any means for inserting local phase errors in the bitstream of a primary signal to distort the bitstream of the primary signal. In particular, Applicant submits that Chiasson does not disclose or suggest any such thing in col. 7, lines 41-46.

Again, the Office Action admits that Nagano does not disclose these features.

So no combination of the cited art could ever produce the apparatus of claim 8 that includes these means.

Therefore, for at least these reasons, Applicant respectfully submits that claim 8 is clearly patentable over the cited art. Accordingly, Applicant respectfully request that the rejection of claim 8 be withdrawn, and that claim 8 be allowed.

Claims 9 and 10

Claims 9 and 10 depend from claim 8 and are deemed patentable for at least the reasons set forth above with respect to claim 8, and the following additional reason.

37 C.F.R. § 1.104(a)(2) requires that “[t]he reasons for any adverse action or any objection or requirement will be stated in an Office action and such information or references will be given as may be useful in aiding the applicant, or in the case of a reexamination proceeding the patent owner, to judge the propriety of continuing the prosecution.” See M.P.E.P. § 707.

Here, the Office Action does not provide any explanation at all of the reasons for the rejections of claims 9 and 10.


Therefore, for at least this additional reason, Applicant respectfully submits that the rejections of claims 9 and 10 are in error and should be withdrawn.

**CONCLUSION**

In view of the foregoing explanations, Applicant respectfully requests that the Examiner reconsider and reexamine the present application, allow claims 2-10 and 16-26 and pass the application to issue. In the event that there are any outstanding matters remaining in the present application, the Examiner is invited to contact Kenneth D. Springer (Reg. No. 39,843) at (571) 283.0720 to discuss these matters.

Respectfully submitted,

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